

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HOWELL WOODWORK CO., INC.

and

Case 44-CA-19349

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL UNION #821

August 16, 1991
DECISION AND ORDER

By Chairman Stephens and Members Devaney and Raudabaugh
Upon a charge filed by the Union on November 13, 1990, the General

Counsel issued a complaint on December 27, 1990, and an amendment to complaint on May 6, 1991, against Howell Woodwork Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On February 1 and June 10, 1991, respectively, the Respondent filed an answer to the complaint and an answer to the amendment to complaint, admitting all of the factual allegations in the complaint, as amended, but denying that it has engaged in any unfair labor practices and alleging as affirmative defenses that this proceeding must be stayed and that the Board lacks subject matter jurisdiction because the Respondent has filed a bankruptcy petition.

On June 17, 1991, the General Counsel filed a Motion for Summary Judgment and a supporting memorandum, with exhibits attached. On June 20, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent's affirmative defenses, based on its filing of a bankruptcy claim, are without merit. It is well-established that Board proceedings fall within the exception to the automatic stay provision of the Federal bankruptcy code for proceedings by a governmental unit to enforce its police or regulatory powers. It is equally well-established that the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to resolve unfair labor practices. See, e.g., Cardinal Services, 295 NLRB No. 96 fn. 2 (June 30, 1989), and cases cited there.

Accordingly, as the Respondent has admitted all the factual allegations contained in the complaint, as amended, we grant the General Counsel's Motion for Summary Judgment.

Findings of Fact

I. Jurisdiction

The Respondent, a New Jersey corporation, is engaged in the manufacture of kitchen cabinets at a facility in Lakewood, New Jersey. During the year preceding issuance of the complaint, the Respondent purchased and received materials and supplies valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material here, the Union has been the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of a unit of the Respondent's production and maintenance employees, including warehousemen, at its Lakewood manufacturing facility. This unit is appropriate

for collective bargaining within the meaning of Section 9(b) of the Act. The Respondent's recognition of the Union's exclusive representative status is set forth in a collective-bargaining agreement with the Union which is effective by its terms from October 1, 1989, through September 30, 1992.

Since at least October 1, 1990, and continuing to date, the Respondent has failed and refused to continue in effect all the terms and conditions of the parties' collective-bargaining agreement by: (1) refusing and failing to make contributions to the Carpenters Specialty and Shopmen Welfare Fund as required by article IV of the agreement; (2) refusing and failing to implement wage increases as required by article V of the agreement; (3) refusing to pay employees for certain sick leave as required by article VII of the agreement; and (4) refusing and failing to pay employees for certain holidays as required by article VIII of the agreement. The foregoing actions constitute midterm modifications of the agreement in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing and failing to continue in full effect all the terms and conditions of the parties' 1989--1992 collective-bargaining agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent failed to adhere to the contractual provisions which require payments to the Union's welfare fund, implementation of wage increases, and payment to employees for sick leave and

holiday leave, we shall order the Respondent to abide by those provisions and to make whole unit employees for any losses ensuing from its unlawful failure to have done so.¹ Such sums shall be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682, 683 (1970), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to resume all monthly Welfare Fund payments and to make all contractually required payments which it unlawfully failed to make to the Welfare Fund.²

ORDER

The National Labor Relations Board orders that the Respondent, Howell Woodwork Co., Inc, Lakewood, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Brotherhood of Carpenters and Joiners of America, Local Union #821, as the exclusive bargaining representative of the Respondent's employees in an appropriate unit described in article I of the 1989--1992 collective-bargaining agreement between the Respondent and the Union, by failing to adhere to provisions in that agreement requiring monthly payments to the Carpenters Specialty and Shopmen Welfare Fund, implementation of wage increases, and payment to employees for sick leave and holiday leave.

¹ See Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

² Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the addition of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. Such additional amounts shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the provisions in its 1989--1992 collective-bargaining agreement with the Union requiring monthly payments to the Carpenters Speciality and Shopmen Welfare Fund, implementation of wage increases, and payment to employees for sick leave and holiday leave.

(b) Make unit employees whole, in the manner set forth in the remedy section of this decision, by reimbursing them, with interest, for any losses they have suffered as a result of the Respondent's failure to abide by the above provisions of its collective-bargaining agreement with the Union.

(c) Make the Welfare Fund whole, in the manner set forth in the remedy section of this decision, for any payments which the Respondent has unlawfully failed to make.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Lakewood, New Jersey copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 16, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with United Brotherhood of Carpenter and Joiners of America, Local Union #821, as the exclusive representative of our unit employees in an appropriate unit described in article I of the current collective-bargaining agreement, effective from October 1, 1989, through September 30, 1992, between us and the Union, by failing to adhere to provisions in that agreement requiring monthly payments to the Carpenters Speciality and Shopmen Welfare Fund, implementation of wage increases, and payment to employees for sick leave and holiday leave.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the provisions in our 1989--1992 collective-bargaining agreement with the Union which require monthly payments to the Carpenters Speciality and Shopmen Welfare Fund, implementation of wage increases, and payment to employees for sick leave and holiday leave.

WE WILL make our bargaining unit employees whole by reimbursing them, with interest, for any losses they have suffered as a result of our unlawful failure to abide by the above provisions of our collective-bargaining agreement with the Union.

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WE WILL make the Welfare Fund whole for any payments which we have unlawfully failed to make.

HOWELL WOODWORK CO., INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106-4404, Telephone 215--597--7643.